

UNITED STATES DISTRICT COURT  
SOUTHERN DISTRICT OF NEW YORK

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JOHN KOWSKY,

Plaintiff,

- against -

NATIONAL RAILROAD PASSENGER  
CORPORATION, a/k/a AMTRAK,

Defendant.

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**ANSWER**

**Docket No. 08 CIV 3548**

**ASSIGNED TO HON:  
DENNY CHIN, USDJ**

Defendant **NATIONAL RAILROAD PASSENGER CORPORATION**, a/k/a **AMTRAK**, (hereinafter "**AMTRAK**"), as and for an answer to plaintiff's Complaint, by its attorneys, **JEFFREY SAMEL & PARTNERS**, upon information and belief, states as follows:

**WITH RESPECT TO THE PARTIES**

FIRST: Denies having any knowledge or information sufficient to form a belief as to each and every allegation contained in paragraph numbered "1" of the complaint.

SECOND: Denies knowledge or information sufficient to form a belief as to the truth of the allegations contained in paragraph "2" of the Complaint, except admits that Amtrak was created by Congress to operate a passenger railroad pursuant to 49 U.S.C. § 24101, et. seq.

**WITH RESPECT TO THE NATURE OF THE  
ACTION, JURISDICTION AND VENUE**

THIRD: Denies having any knowledge or information sufficient to form a belief as to each and every allegation contained in paragraph numbered "3" of the complaint, and refers all questions of law to the Honorable Court at the time of trial.

FOURTH: Denies having any knowledge or information sufficient to form a belief as to each and every allegation contained in paragraph numbered "4" of the complaint, and refers all questions of law to the Honorable Court at the time of trial.

FIFTH: Denies having any knowledge or information sufficient to form a belief as to each and every allegation contained in paragraph numbered "5" of the complaint, and refers all questions of law to the Honorable Court at the time of trial.

**WITH RESPECT TO THE FACTUAL BACKGROUND**

SIXTH: With respect to the allegations incorporated in paragraph numbered "6" of the complaint, **AMTRAK** repeats and reiterates each and every denial previously made hereinabove with the same force and effect as if the same were set forth herein at length.

SEVENTH: Admits each and every allegation contained in paragraph numbered "7" of the complaint.

EIGHTH: Denies having any knowledge or information sufficient to form a belief as to each and every allegation contained in paragraph numbered "8" of the complaint.

**WITH RESPECT TO COUNT I: FELA**

NINTH: With respect to the allegations incorporated in paragraph numbered "9" of the complaint, **AMTRAK** repeats and reiterates each and every denial previously made hereinabove with the same force and effect as if the same were set forth herein at length.

TENTH: Admits each and every allegation contained in paragraph numbered "10" of the complaint.

ELEVENTH: Denies having any knowledge or information sufficient to form a belief as to each and every allegation contained in paragraph numbered "11" of the complaint, and refers all questions of law to the Honorable Court at the time of trial.

TWELFTH: Denies having any knowledge or information sufficient to form a belief as to each and every allegation contained in paragraph numbered "12" of the complaint, and refers all questions of law to the Honorable Court at the time of trial.

THIRTEENTH: Denies having any knowledge or information sufficient to form a belief as to each and every allegation contained in paragraph numbered "13" of the complaint, and refers all questions of law to the Honorable Court at the time of trial.

FOURTEENTH: Denies each and every allegation contained in paragraph numbered "14" of the complaint.

FIFTEENTH: Denies each and every allegation contained in paragraph numbered "15" of the complaint.

SIXTEENTH: Denies each and every allegation contained in paragraph numbered "16" of the complaint.

SEVENTEENTH: Denies each and every allegation contained in paragraph numbered "17" of the complaint.

EIGHTEENTH: Denies each and every allegation contained in paragraph numbered "18" of the complaint.

NINETEENTH: Denies each and every allegation contained in paragraph numbered "19" of the complaint.

TWENTIETH: Denies each and every allegation contained in paragraph numbered "20" of the complaint.

TWENTY-FIRST: Denies each and every allegation contained in paragraph numbered "21" of the complaint.

TWENTY-SECOND: Denies each and every allegation contained in paragraph numbered "22" of the complaint.

**FIRST AFFIRMATIVE DEFENSE**

TWENTY-THIRD: Any injuries suffered by plaintiff were caused solely by his own negligence and not by any negligence of the defendant **AMTRAK**.

**SECOND AFFIRMATIVE DEFENSE**

TWENTY-FOURTH: Any injuries suffered by plaintiff were caused, in part, by his own negligence, and any recovery by plaintiff must be diminished in proportion to that part of his injuries attributable to his own negligence.

**THIRD AFFIRMATIVE DEFENSE**

TWENTY-FIFTH: Any injuries suffered by plaintiff were not caused by a negligent act or omission of defendant **AMTRAK** or any individual acting under its direction or control.

**FOURTH AFFIRMATIVE DEFENSE**

TWENTY-SIXTH: Plaintiff failed to mitigate or otherwise act to lessen or reduce the damages alleged in the Complaint.

**FIFTH AFFIRMATIVE DEFENSE**

TWENTY-SEVENTH: That there is no proximate cause between the acts of **AMTRAK** and plaintiff's alleged accident and/or the injuries resulting therefrom.

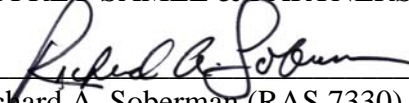
**WHEREFORE**, defendant **AMTRAK** demands judgment dismissing the Complaint herein, together with the costs and disbursements of this action.

Dated: New York, New York  
April 30, 2008

Yours, etc.,

JEFFREY SAMEL & PARTNERS

By:

  
Richard A. Soberman (RAS 7330)  
Attorneys for Defendant **AMTRAK**  
150 Broadway, 20<sup>th</sup> Floor  
New York, New York 10038  
(212) 587-9690

TO: **MYERS LAFFERTY LAW OFFICES, P.C.**  
Attorneys for Plaintiff  
1516 Market Street, Suite 810  
Philadelphia, PA 19102

**CERTIFICATE OF SERVICE**

I hereby certify that I have this 30<sup>th</sup> day of April, 2008, caused to be placed in the United States Mail, postage prepaid, a true and correct copy of the foregoing **ANSWER**, to:

**MYERS LAFFERTY LAW OFFICES, P.C.**

Attorneys for Plaintiff  
1516 Market Street, Suite 810  
Philadelphia, PA 19102

A handwritten signature in dark ink, appearing to read "Richard A. Soberman", is written over a horizontal line.

Richard A. Soberman  
(RAS 7330)

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Defendant.

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**ANSWER**

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**JEFFREY SAMEL & PARTNERS**  
Attorneys for Defendant  
**NATIONAL RAILROAD PASSENGER  
CORPORATION**  
Office and P.O. Address  
150 Broadway - 20th Floor  
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File No.: 16-0397